SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA, APPELLANT,

vs.

JAMES M. POWER, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 4, 1966

[fol. A]

IN THE
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

MARTHA CARDONA, Petitioner

for an order pursuant to Article 78
of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents.

NOTICE OF MOTION

Sirs:

Please take Notice that upon the annexed Petition of Martha Cardona, verified August 6, 1963, Petitioner will move this Court at Special Term Part I thereof to be held in the County Courthouse, Foley Square, New York on August 14, 1963 at 9:30 a.m., or as soon thereafter as counsel can be heard for an order directing Respondents to register Petitioner as a duly qualified voter, or in the alternative directing Respondents to subject Petitioner to a literacy test in the Spanish language and upon her successfully passing such test to register her as a duly qualified voter, and for such other and further relief as may be deemed proper.

Yours, etc.,

Paul O'Dwyer, Attorney for Petitioner, 50 Broad Street, New York City.

To:

The Board of Elections of the City of New York, 80 Varick Street, New York.

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Application of

MARTHA CARDONA, Petitioner

for an order pursuant to Article 78 of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents.

PETITION—Verified August 6, 1963

Petitioner herein, by her attorney Paul O'Dwyer, respectfully shows this Court:

1. I am a citizen of the United States and of the State of New York. I reside at 529 West 135th Street, Borough of Manhattan, City of New York and have so resided continuously since 1950.

2. I was born in Rincon, Commonwealth of Puerto Rico, United States of America on February 28, 1923. Both of my parents were born in Puerto Rico. I attended school at Aguada, Puerto Rico. I am married and have three children, all of whom were born in New York City. My husband is also a native born citizen of the United States.

(A)

3. Before taking up residence in New York City in 1948, I lived in Aguada, Puerto Rico where I regularly voted in gubernatorial, legislative and municipal elections, pursuant to the provisions of Chapter 4 of Title 48 of the United States Code.

4. My native language is Spanish, which language I both read and write. I do not read and write English. I am a [fol. 2] regular reader of the New York City Spanish-language daily newspapers and other periodicals, which, I am informed, provide proportionately more coverage of government and politics than do most English-language newspapers. I listen to Spanish-language radio broadcasts from New York City radio stations which similarly provide extensive treatment of local, state and national government and politics. I have a general understanding of government and politics which, I am informed is at least equal to that of the average, adult citizen, resident and voter of New York City. I am interested in my government and I want to play the proper citizen's role in the selection of those who purport to represent my interests in the elective offices which they hold.

In the school which I attended as a child, I was taught the same general subjects as are taught in New York City to my stepson, the only significant difference being that my stepson is taught in English and I was taught in Spanish. I learnt American history and government in my school just as my stepson now learns it in his school. I am informed that the text books in general use in schools on the mainland of the United States are, except for language, substantially identical to those in use in the school system of Puerto Rico.

5. On July 23, 1963 I appeared before the Respondents constituting the Board of Elections of the City of New York and made due demand upon them that I be registered and enrolled as a duly qualified voter. I there and then pre-

sented evidence of my age, U. S. citizenship and residence, as above set forth, none of which was in any way questioned or disputed. The said Board of Elections then and there required that I submit myself to a test of my literacy in English. I informed the said Board of Elections that I was [fol. 3] unable to do so and made demand that I be permitted to take a literacy test in my native language, Spanish. This, the Board of Elections refused to do and thereupon refused to register and enroll me as a voter.

6. The sole and exclusive reason advanced by the said Board of Elections for its action were and are certain requirements of Article II, section 1, of the New York State Constitution and sections 150, 168 and 201 (1) of the New York State Elections Law, which, in part provides that "after January 1, 1922, no person shall become entitled to vote . . . unless such person is also able, except for physical disability, to read and write English".

7. The provisions of law referred to are unreasonable, arbitrary, unconstitutional and void. They are manifestly not related to determining the ability of a citizen to exercise the elective franchise, neither in their purpose nor in their effect. As recent extensive United States Senate Hearings have shown (*Literacy Tests and Voter Requirements in Federal and State Elections,* Hearings before Subcommittee on Constitutional Rights of Judiciary Committee, 87th Congress, 2nd Session [1962]), the history of these provisions and provisions similar to them in the laws of other States, shows that their purpose is to exclude certain groups of citizens from taking part in elections and to reduce them to a second-class status. The terms of the provisions referred to show that, in their effect, they make irrational distinctions between citizens of differing racial background and serve not to assure qualification to vote but disqualification. Thus, under these provisions, a citizen who was entitled to vote prior to 1922, before any form of literacy test was in effect, may continue to vote, notwithstanding that he may be totally illiterate in any language.

[fol. 4] Moreover, by exempting from their requirements persons with a "physical disability", it guarantees the right to vote to persons who by reason of physical disability cannot read or write and do not even have available to them communication media, such as radio, from which they can aurally derive information in regard to government, politics and issues of election campaigns. The combination of the invalid "grandfather clause" and the exemption, infect the entire provision of law.

8. The right to vote is a basic right of all citizens of our Nation. Without that basic right no person can claim to be in possession of full and equal citizenship in a democracy or under a republican form of government. As the President's Commission on Civil Rights stated in its 1947 Report:

> "The right of all qualified citizens to vote is today considered axiomatic by most Americans. To achieve universal suffrage we have carried on vigorous political crusades since the earliest days of the Republic. In theory the aim has been achieved, but in fact there are many backwaters in our political life where the right to vote is not assured to every qualified citizen. The franchise is barred to some because of race; to others by institutions or procedures which impede free access to the polls."

I pay taxes for the support of my government. I stand ready as all of my class, to serve my country in war. In the service of the army of the United States we have not been asked to take a literacy test in English—and fellow Puerto Ricans have fallen before enemy guns in three wars in which our country was in jeopardy. I am subject to the laws of my country. I sustain all of the duties and obligations of citizenship, yet I have been denied the one right of citizenship which is greater than all others: the right to join in choosing who shall govern me.

[fol. 5] 9. The United States Constitution, and Statutes guarantee to me citizenship of the State of New York. I was born an American on American soil. The language of my place of birth is Spanish. Thus, unless I am permitted to vote in New York and to take a literacy test in the language of that part of the area of the United States in which I was born, the guarantee of the United States Constitution which vests in me citizenship in any State in the Union where I reside, and grants to me "all privileges and immunities of citizens in the several States" (Art. IV, 2), is rendered meaningless and set at naught, and I and all others of my class are victims of a legal hoax. The rights of citizens of the United States must be reciprocal or discrimination necessarily results. Under the Constitution of the Commonwealth of Puerto Rico, adopted by the People of Puerto Rico on March 3, 1952 and amended and ratified by the United States Congress on July 3, 1952 (30 Stat. 1759) not only may an English-speaking New York citizen who moves to Puerto Rico vote in elections held there, notwithstanding his inability to read or write the native language of Puerto Rico, but the Constitution of Puerto Rico, guarantees that he may be elected to office notwithstanding that he is literate only in English (Art. III, §5, Art. VI, §4).

In contrast to these provisions, the cited provisions of New York law operate to automatically deprive me of my basic rights of United States citizenship upon my achieving New York citizenship: In Puerto Rico I was a duly qualified voter and as such voted in regular and special elections; by moving to New York and becoming a citizen of New [fol. 6] York, I forfeit my basic citizenship rights. It is submitted that this is inconsistent with reason and law.

The United States citizenship which my birth in Puerto Rico endowed me with, was not a limited privilege to enjoy only such of those rights of citizenship as various State governments might see fit to accord to me: it is an unqualified right of citizenship and it includes the right to live in, and automatically attain full citizenship in every

State of the Union. If by the accident of my birth in a part of our Nation in which the common language is Spanish I can be deprived of my right to vote for President, Senator, Congressman, Legislator, Mayor and Councilman in the City where I live, I am relegated to a second-class citizenship which our United States Constitution prohibits.

10. I believe that Puerto Ricans are a race apart within the meaning of the 14th and 15th Amendments to the United States Constitution. We lived together for centuries, sharing the same trials, and tribulations and the same hopes for the enjoyment of Freedom. Together in our island home we shared a common language, engaged in a common cause against oppression; bound together from divergent stock for centuries, we developed common traits, a common outlook, and a distinctive culture which is peculiarly our own. Sixty-five years of living under the American flag during which time this culture was at first discouraged, but for the past half-century fostered by the mainland government has served to make that culture grow, flower and reseed. Webster's dictionary says, "Race" is a term describing "a large body of persons who may be thought of as one unit because of common characteristics." Truly we are a race and it is as such that we are being denied the right to vote in New York, notwithstanding the provi-
[fol. 7] sions of the Constitution of the United States.

11. Upon the foregoing grounds alone the provisions of New York law which precludes me from exercising my right to vote solely upon the ground of my inability to read and write English, violate section 1. of the 14th Amendment and section 1. of the 15th Amendment to the Constitution of the United States and the Federal Civil Rights Acts of 1957 and 1960.

(B)

There are in addition, the following independent circumstances leading to the same result.

12. Puerto Rico was incorporated into the territory of the United States pursuant to the Treaty of Paris of 1898 (30 Stat. 1759). That treaty provided:

> "The civil rights and political status of the native inhabitants (of Puerto Rico) shall be determined by Congress."

In the Jones Act of 1917 (Public Law 600) and in later statutes (e.g. Nationality Act of 1940, ch. 876, Tit. I, subch. II) Congress expressly accorded full United States citizenship to native-born Puerto Ricans. They were, in the language of the Jones Act, "declared and shall be deemed and held to be citizens of the United States". In none of those statutes has Congress in any way indicated that the "political rights" of persons born in Puerto Rico shall be dependent upon their ability to read and write English. Not only would such a condition be patently absurd and unjust, but it would violate the Treaty of Paris.

Precisely to the contrary, Congress has explicitly precluded political discrimination against Spanish-speaking, [fol. 8] native-born Puerto Ricans. This Congress did by its enactment (66 Stat. 327) of Article VI, section 4 of the Constitution of the Commonwealth of Puerto Rico, which provides:

> "No person shall be deprived of the right to vote because he does not know how to read or write or does not own property."

13. The Treaty of Paris, the complex of statutes enacted pursuant thereto and the Congressionally-enacted Constitution of the Commonwealth of Puerto Rico are all, in the respects noted, at variance with the English-language literacy provisions of New York law above referred to, and those provisions of law are invalid as applied to me and to other United States citizens of Puerto Rican birth, under the United States Constitution and particularly Article VI thereof, which provides that, "all treaties made under the

authority of the United States shal. be the Supreme Law of the Land". The Treaty of Paris did not envisage that we Puerto Ricans were merely to effect a change of masters.

14. The Congress-enacted Constitution of the Commonwealth of Puerto Rico (the authority for which lies in the Treaty of Paris) is both implicitly and explicitly at variance with the English-literacy test requirements of New York law above referred to.

That Constitution, approved by the President, and enacted by Congress (66 Stat. 327), closes its preamble as follows:

> "We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles [fol. 9] of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere; our fervor for education; our faith in justice; our devotion to the courageous, industrious and peaceful way of life; our fidelity to individual human values above and beyond social position, racial differences and economic interests; and our hope for a better world based on these principles."

15. The foregoing provisions of the Constitution of the Commonwealth of Puerto Rico, as adopted by the United States Congress constitute the observance by Congress of the obligations cast upon it by the Treaty of Paris, under which Congress and Congress alone has power and authority to determine the political rights of American citizens of Puerto Rican birth. Recognizing that ours is not a single-culture Nation but a fusion of several cultures, principally English and Spanish, Congress has declared that both Spanish and English are the recognized tongues of our country and our hemisphere. This it has done, not only by providing that public elective office under the

Puerto Rico Constitution which it enacted shall be open to those of either language, but it has gone further and expressly prohibited the application of literacy tests to citizens born in Puerto Rico, as a qualification for voting. Congress has recognized that the full citizenship status of Puerto Rican born Americans would not be attained if the exercise of those rights were dependent upon a reading and writing knowledge of a language which, to the Puerto Rican is foreign.

Upon these grounds, too, the provision of New York law which preclude me from exercising my citizen's right to vote [fol. 10] solely upon the ground of my inability to read and write English are void as violative of Article IV, §§2, and 4; Article VI, Amendments V, XIV and XV of the United States Constitution.

(C)

16. In 1953 the government of the United States formally committed itself to the United Nations to accord to its citizens of Puerto Rican birth full and complete political rights. This, the United States Government did as part of an elaborate presentation, the purpose of which was to exempt itself from submitting annual reports to the Secretary General of the United Nations upon Puerto Rico as colonial territory of the United States, pursuant to Article 73(e) of the United Nations Charter. (*U. S. Participation in the U. N.*, Report by the President to the Congress for the year 1953, pp. 181, et seq.). Upon the basis of this commitment, the General Assembly of the United Nations adopted a Resolution declaring that Chapter XI of the United Nations Charter is inapplicable to Puerto Rico (*id.*).

Addressing itself specially to the political rights accorded to the people of Puerto Rico, the *"Memorandum By the Government of the United States, etc."* submitted to the United Nations on March 21, 1953, stated that the people of Puerto Rico have had:

". . . universal adult suffrage since 1929. There have been no property requirements since 1906 and the last literacy requirements were removed in 1935."

It further noted that full and complete United States citizenship has been enjoyed by the Puerto Rican people [fol. 11] since 1917, and that, "the Constitution of the Commonwealth (of Puerto Rico) is similar to that of a State of the Federal Union". It further assured the General Assembly:

"The people of Puerto Rico continue to be citizens of the United States as well as Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable to Puerto Rico . . . The People of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage, in free and periodic elections in which differing political parties offer candidates, and which are assured freedom from undemocratic practices by the Constitution itself."

17. The commitment made formally by the Government of the United States to the General Assembly of the United Nations constitutes, under the United Nations Charter which was duly ratified by the President of the United States, by and with the advice and consent of the Senate of the United States on August 8, 1945, was an exercise of the treaty and foreign relations powers of the Government of the United States pursuant to Article VI of the Constitution of the United States and the United States Participation Act (22 US C., Sections 287, *et seq.*), and as such, binds the United States and each State of the Union. The imposition upon United States citizens of Puerto Rican birth of the intolerable and unreasonable condition that in order to exercise their political rights as citizens and under the commitment aforementioned, they must learn a language which to them is foreign, directly violates that com-

[fol. 12] mitment, in contravention of Article VI of the United States Constitution, the United Nations Participation Act, the Charter of the United Nations, and the formal commitment referred to. Consequently, for this reason too, the application to me of the provisions of New York law referred to, the denial by respondents of my application to register for voting upon the sole ground of my inability to read and write English and their denial of my demand that I be permitted to take a voter's literacy test in my own language, Spanish, are all acts in violation of Article VI of the Constitution of the United States, the United Nations Participation Act, the Charter of the United Nations and the formal commitments of the Government of the United States hereinabove referred to.

Wherefore, your Petitioner demands that an order be made herein directing the Respondents herein to register Petitioner as a duly qualified voter, or in the alternative directing the Respondents herein to subject Petitioner to a literacy test in the Spanish language and upon her successfully passing such test to register her as a duly qualified voter, and for such other relief as may be deemed proper.

Paul O'Dwyer, Attorney for Petitioner, 50 Broad Street, New York 4, N. Y.

[fol. 13] *Duly sworn to by Martha Cardona, jurat omitted in printing.*

[fol. 13a]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Application of

MARTHA CARDONA, Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act,

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents.

ANSWER OF JAMES M. POWER, ET AL—August 27, 1963

The respondents, James M. Power, et al, for their answer allege:

First: Deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs of the petition numbered "1", "2", "3", "4", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16" and "17".

The Material and Pertinent Facts Herein Are:

Second: Executive Law §71 provides that whenever the constitutionality of a statute is brought into question in any proceeding, the Court may make an order permitting the Attorney General of the State of New York to appear in support of the constitutionality of such statute. When such an order has been made, it shall be the duty of the Attorney General to appear in such proceeding in support of the constitutionality of such statute.

Third: On the 14th day of August, 1963, this Court granted the Attorney General's application, made pursuant to Executive Law §71, to appear in this proceeding.

[fol. 13b] Fourth: Respondents respectfully refer this Court to the Attorney General for any defense of the constitutionality of the statute involved herein.

Wherefore, respondents respectfully pray that an order be issued herein.

Yours, etc.

Leo A. Larkin, Corporation Counsel, Attorney for Respondent, James M. Power, Office and P.O. Address, Municipal Building, Borough of Manhattan, City of New York.

Dated: August 27, 1963.

To:

Paul O'Dwyer, Esq., Attorney for Petitioner, 50 Broad Street, New York City.

Louis J. Lefkowitz, Esq., Attorney General, Attorney for Pro Se, 80 Centre Street, New York 13, N. Y.

[fol. 13c] *Duly sworn to by James M. Power, jurat omitted in printing.*

[fol. 14]

At a Special Term of the Supreme Court, Part I thereof, held in and for the County of New York, at the County Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 3rd day of September, 1963.

Present: Hon. Frederick Backer, Justice.

In the Matter of the Application of

MARTHA CARDONA, Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act,

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents.

ORDER PERMITTING ATTORNEY GENERAL OF NEW YORK TO INTERVENE—September 3, 1963

A motion having been made orally by the Attorney General of the State of New York, for an order permitting him to appear in this proceeding pursuant to Executive Law, §71;

Now, after hearing Louis J. Lefkowitz, Attorney General of the State of New York, by George C. Mantzoros, Assistant Attorney General, in support of the motion, and upon the consents given in court by Paul O'Dwyer, Esq., W. Bernard Richland, Esq., of counsel; and by Leo Larkin, Esq., Corporation Counsel of the City of New York, Arthur Geisler, Esq., Assistant Corporation Counsel, of counsel; and due deliberation having been had thereon, it is

[fol. 15] Ordered that the said motion be and the same is hereby granted and the Attorney General of the State of New York be and he is hereby permitted to appear in this proceeding as intervenor pursuant to Executive Law, §71.

Enter

F B, J. S. C.

[fol. 16]

In the Supreme Court of the State of New York

County of New York

Index No. 12434/63

In the Matter of the Application of

Martha Cardona, Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act,

—against—

James M. Power, Thomas Mallee, Maurice J. O'Rourke and John R. Crews, Members of and constituting the Board of Elections of the City of New York, Respondents,

—and—

Louis J. Lefkowitz, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law.

Answer of Attorney General—February 28, 1964

Louis J. Lefkowitz, Attorney General of the State of New York, appearing pursuant to Executive Law, Sec. 71 answering the petition, alleges:

First: Denies any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in paragraphs of the petition desig-

nated "1", "2", "3", "4", "5", "6", "8", "9", "10", "11", "12", "13", "14", "15", "16", and "17".

Second: Denies the allegation contained in paragraph "7" of the petition that the provisions of law referred to are unreasonable, arbitrary, unconstitutional and void and denies any knowledge or information thereof sufficient to form a belief as to the truth of each and every other allegation contained in paragraph "7" of the petition.

[fol. 17]

Objections in Point of Law With Affidavit

Third: That it affirmatively appears from the petition herein that it does not state facts sufficient to entitle the petitioner to the relief prayed for or any part thereof or to any other relief.

Fourth: The identical issue here raised, to-wit, the constitutionality of Article II, Sec. 1, of the Constitution of the State of New York and Election Law, Sections 150, 168, 201(1), implementing the same, has been adjudicated in recent successive proceedings and declared constitutional (*Camacho* v. *John Doe*, 21 Misc. 2d 692, 221 N.Y.S. 2d 262, aff'd., 7 N.Y. 2d 762 [1959]; and *Camacho* v. *Rogers*, 199 F. Supp. 155 [S.D.N.Y. 1961; three judge court]), which bars its relitigation in this proceeding under the doctrine of *res judicata*. See also, *Lassiter* v. *Northampton Co. Board of Elections*, 360 U. S. 45 (1959), sustaining the constitutionality of the North Carolina Constitution requiring that a prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language."

Fifth: The acts of the Respondents alleged in the petition herein and at the times therein mentioned, if done, were performed within the scope of their powers, duties and jurisdiction pursuant to the Constitution of the State of New York, Art. II, Sec. 1, and Election Law, Sections 150, 168, 201(1), since the provisions thereof mandated the Re-

spondents in the exercise of their official duties to refuse to register petitioner after Respondents requested petitioner to submit to a test of literacy in English and petitioner "informed the said Board that [she] was unable to do so".

[fol. 18] Wherefore, the Attorney General respectfully requests that the petition herein be dismissed.

Dated: New York, N. Y.
February 28, 1964.

Louis J. Lefkowitz, Attorney General of the State of New York, Attorney *pro se*, appearing pursuant to Executive Law, Sec. 71, 80 Centre Street, New York, N. Y. 10013.

To:

Paul O'Dwyer, Esq., Attorney for Petitioner, 50 Broad Street, New York, N. Y.

Hon. Leo A. Larkin, Corporation Counsel, Attorney for Respondents, Municipal Building, New York, New York.

[fol. 19] *Duly sworn to by George C. Mantzoros, jurat omitted in printing.*

[fol. 20]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 12434/63

In the Matter of the Application of

MARTHA CARDONA, Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act,

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents,

—and—

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law.

AFFIDAVIT OF GEORGE C. MANTZOROS—
Sworn to February 28, 1964

George C. Mantzoros, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, appearing herein pursuant to Executive Law, Sec. 71, and the order of this Court (Backer, J.) made and entered on September 3, 1963, in support of the constitutionality of Article II, Sec. 1, of the Constitution of the State of New York and Election Law, Sections 150, 168, 201(1).

2. Heretofore, a motion to dismiss the petition for failure to contain a plain and concise statement was denied by this Court (N.Y.L.J. Nov. 20, 1963, p. 14) (Postel, J.) and leave to appeal was denied by this Court (N.Y.L.J. Dec. 11, 1963,

p. 14) (Postel, J.) and by the Appellate Division (Valente, J.).

[fol. 21] 3. Petitioner seeks an order directing the Board of Elections to register petitioner as a duly qualified voter or to give her a literacy test in the Spanish language. The nub of the petition is contained in paragraph 5 where it is alleged:

> "* * * I informed the said Board of Elections that I was unable to do so and made demand that I be permitted to take a literacy test in my native language, Spanish."

4. There is an "identity of issue" between this proceeding and the prior proceedings of *Camacho* v. *John Doe,* 31 Misc. 2d 692, 7 N. Y. 2d 762 [Nov. 19, 1959] and *Camacho* v. *Rogers,* 199 F. Supp. 155 [S.D.N.Y. 1961] [three judge court]. In these prior proceedings the constitutionality of Article II, Sec. 1, of the New York Constitution and the implementing provisions contained in the Election Law was sustained. Furthermore, the issue of the constitutionality of English literacy tests has been adjudicated by the Supreme Court of the United States in *Lassiter* v. *Northampton Co. Board of Elections,* 360 U. S. 45 (June 8, 1959). In *Lassiter* the Supreme Court sustained the constitutionality of a provision of the North Carolina Constitution requiring that a prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language". The *Lassiter* decision was cited in the prior proceedings by the Attorney General of the State of New York and the Corporation Counsel of the City of New York (*Camacho* v. *John Doe,* [Record on Appeal]; *Camacho* v. *Rogers, supra,* and by the Attorney General of the United States (*Camacho* v. *Rogers, supra* [*amicus* brief]). Consequently, the Attorney General in his Answer to the Petition at bar asserts as one of the objections in point of law, that this proceeding to relitigate the identical issue for a third [fol. 22] successive time, is barred by the doctrine of *res judicata.*

5. Petitioner, Camacho, in the prior proceedings, like petitioner herein, alleged he was born in Puerto Rico and that he was "not literate in the English language" (*Camacho* v. *John Doe, supra,* pet. par. 1) (Ex. A) and spoke of all similarly situated persons when he referred to "the right to vote for Spanish speaking United States citizens" (*Camacho* v. *Rogers, supra,* complaint, par. 8) (Ex. B). Petitioner herein likewise refers to "all of my class" (par. 8). Moreover, petitioner herein is represented by Paul O'Dwyer, Esq., who also appeared, of counsel, in *Camacho* v. *Rogers, supra,* 199 F. Supp. 155. Since there was adequate representation in the successive adjudications of the identical issue in the prior proceedings, the decisions of the New York Court of Appeals and the three Judge Federal Court as well as the Supreme Court of the United States, are binding on all similarly situated persons and the public at large.

6. The identity of issue between the proceeding at bar and *Camacho* v. *John Doe* and *Camacho* v. *Rogers, supra,* is further illustrated by the similarity in the nature of the relief sought and the constitutional objections. For example, the petition in *Camacho* v. *John Doe, supra,* cited the Treaty of Paris of 1898, the Fourteenth and Fifteenth Amendments to the U. S. Constitution, and the Civil Rights Act of 1957. In *Camacho* v. *Rogers* the complaint also asserted alleged rights under Article VI of the U. S. Constitution and the Civil Rights Act of 1960. The brief (Point II) in the federal court discussed the Fourteenth Amendment and cited *Guinn* v. *United States,* 238 U. S. 347 and [fol. 23] *Ex parte Yarborough,* 110 U. S. 651 which are cited in the brief in the proceeding at bar (p. 9). The petition at bar similarly re-alleges the Fourteenth and Fifteenth Amendments of the U. S. Constitution (par. 15), the Treaty of Paris (par. 12), Article VI of the U. S. Constitution (par. 17), and the Civil Rights Acts of 1957 and 1960. It also alleges that the literacy test provision is invalid because it contains two exemptions, to wit: (1) citizens entitled to vote prior to 1922 and (2) physical disability, in

support of which the brief (p. 9) cites the *Guinn* and *Yarborough* cases.

7. In any event, the contentions here that the exemption of citizens entitled to vote prior to 1922 from the literacy test requirement constitutes a "grandfather clause" and that this exemption plus the physical disability exemption "infect the entire provision of law" (par. 5), are frivolous. The exemption of citizens entitled to vote prior to 1922 is not a "grandfather clause" for it in no way exempts their descendants from the literacy test qualification. Furthermore, this exemption has no similarity to the constitutional provision condemned in *Guinn* v. *United States*, 238 U. S. 347, which provision established an exemption to persons entitled to vote prior to January 1, 1866, continuing conditions existing before the adoption of the Fifteenth Amendment and the continuance of which conditions the amendment prohibited. Hence, the *Guinn* case has no relevancy in the proceeding at bar. Article II, Sec. 1 of the New York Constitution does not violate the United States Constitution for it is perfectly clear, and it has been repeatedly so held, that the right to vote was not "denied or abridged * * * on account of race, color or previous condition of servitude" (Fifteenth Amendment) by the provision in question.

[fol. 24] The *Guinn* case and *Yick Wo* v. *Hopkins*, 118 U. S. 356, cited in petitioner's brief (p. 9) were also cited in the federal action in the amicus brief of the Civil Liberties Union (p. 1-C). The amicus brief of the American Jewish Congress in the Court of Appeals in *Camacho* v. *John Doe*, cited the *Guinn* case and *Ex parte Yarborough*, cited by petitioner (p. 9).

8. The State of New York literacy test and its administration has been recently described as "model" and "most exemplary". See 31 Notre Dame Lawyer, pp. 257-258 (1956) where the author observed:

> "The most exemplary use of the literacy test has been made in New York, where definite, objective standards

have been established. In 1943, twelve tests, prepared by the state department of education and administered by the board of regents, were given to all applicants for registration throughout the state. These tests were designed for a sixth grade level of reading, each test consisted of an eight to ten line composition on topics of civics, history, geography, natural science or biography. Following this composition were eight questions based on the composition which could be easily answered if the applicant could understand what he had read. In 1945, only 9.21 percent of those who took the test failed it, and this in a state with an extremely large alien population."

9. Pursuant to the declaration of the United States Supreme Court that "the interest of the state requires that there be an end to litigation" (*Reed* v. *Allen*, 286 U. S. 191, 198), the public interest requires the dismissal of the third successive challenge to the constitutionality of Article II, Sec. 1, of the New York Constitution and the Election Law implementing the same.

[fol. 25] Wherefore, it is respectfully requested that this proceeding be dismissed in all respects.

George C. Mantzoros

Sworn to before me this 28th day of February, 1964,
Barry J. Lipson, Assistant Attorney General.

[fol. 26]

EXHIBIT A TO AFFIDAVIT

SUPREME COURT
BRONX COUNTY

In the Matter of the Application of
JOSE CAMACHO,
Petitioner,

—against—

JOHN DOE, RICHARD ROE, JOHN STYLES, and JOHN BROWN, whose true names are unknown, said names being fictitious, the persons intended being the Inspectors of Election in and for the 26 Election District of the 6 Assembly District of the County of Bronx, and constituting the Board of Inspectors of Election of said Election District,
Respondents.

The petition of JOSE CAMACHO respectfully shows to this Court:

1. I am a citizen of the United States and over the age of 21 years, I have been an inhabitant of the State of New York for upwards of one year next preceeding this election, a resident of the City of New York for the last four months, and a resident of the 26 Election Election District, in the 6 Assembly District in Bronx County for the last thirty days. My place of residence is 1145 Fox Street, which is in said election district. In the past I would have been refused registration for the election because I am not literate in the English Language.

2. I am a citizen of the United States by birth in Puerto Rico.

3. That I am literate in the Spanish Language because I am a descendant of former subjects, who has elected the

Spanish Language, residing in the Commonwealth of [fol. 27] Puerto Rico, and pursuant to a treaty between the United States and Spain executed in 1898, and certain subsequent laws ratified by the Congress of the United States establishing the Spanish Language or the English Language as the languages of the Commonwealth of Puerto Rico, as well as the citizenship of Puerto Ricans of the United States.

4. That your petitioner claims that he is being denied the equal protection of the laws of the State of New York in that I am unable to vote because of my inability to read and write the English language, which is attributable to the fact that my racial ancestry is Spanish, and that the Congress of the United States ratified laws establishing Spanish as a language of Puerto Ricans and likewise made Puerto Ricans citizens.

5. That the 15th Amendment of the Constitution says that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, again I say that I speak and am literate in Spanish because of my Spanish racial ancestry.

6. I believe that to require a literacy test in any language shall be proper only provided that the State of New York shall comply with Section 2 of the 14th Amendment of the Constitution of the United States by reducing the number of representatives to Congress when the right to vote is denied to U.S. citizens for any reason except participation in rebellion or other crime in the proportion which the number of such citizens shall bear to the whole number of citizens over 21 years of age.

7. Petitioner respectfully submits that to require him to be literate in English as a condition to the right to vote is to establish a norm of citizenship in addition to that established by the Congress of the United States, and that the State of New York has no authority to vary the definition of U.S. citizenship in any manner.

[fol. 28] 8. That petitioner by his disfranchisement shall thereby be denied representation in the government even though no provision is made to relieve him from taxation.

9. Unless an order is granted and my right to register and vote determined I shall be deprived of my vote in the coming election.

10. No previous application for this or a similar order has been made to any Court or Judge by me.

WHEREFORE, I pray that an order be granted by this Court returnable forthwith, requiring the said Board of Inspectors of Election of Said Election District to comply with my demand to allow me to take a literacy test in Spanish, to register, to sign the registration Book and to cast my vote on Election day as an elector of said Election district, or to appear before this Court and show cause why an order should not issue out of this Court commanding them to allow me to take a literacy test in the Spanish Language as prescribed by Section 166 of the Election Law for the English Language, to register and to vote on election day, and cast my vote as an elector of said Election District.

Jose Camacho
Petitioner

STATE OF NEW YORK
COUNTY OF BRONX

JOSE CAMACHO, being duly sworn, deposes and says that is the petitioner named in the foregoing petition; that the said foregoing petition has been translated to him in the Spanish Language, and as so translated he knows the contents thereof; that the same is true to his own knowledge, except as to the matter therein stated to be alleged on in-
[fol. 29] formation and belief, and that as to those matters he believes it to be true.

Jose Camacho
Petitioner

Sworn to before me this
4th day of October, 1958

FRANK C. TERMINI
Notary Public, State of New York
No. 24-9304700
Qualified in Kings County
Commission Expires March 30, 1960

[fol. 30]

EXHIBIT B TO AFFIDAVIT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Application of

JOSE CAMACHO,

Petitioner,

—against—

WILLIAM T. ROGERS, Attorney General of the United States, NELSON ROCKEFELLER, Governor of the State of New York, LOUIS LEFKOWITZ, Attorney General of the State of New York, and the BOARD OF ELECTIONS OF THE CITY OF NEW YORK,

Respondents.

TO THE UNITED STATES DISTRICT COURT:

The petition of JOSE CAMACHO respectfully shows to this Court:

1. That I am a citizen of the United States, and over the age of 21 years. I was born in Puerto Rico, and during my residence in Puerto Rico, and since my 21st birthday I was at all times a qualified voter, and I at all times exercised my right to vote in Puerto Rico.

2. I have been an inhabitant of the State of New York for upwards of one year preceding the next election, a resident of the City of New York for the last 4 months, and a resident of the 26th Election District, in the 6th Assembly District, Bronx County for the last thirty days. My residence has in fact been at all times herein mentioned at 1145 Fox Street, Bronx, New York City, New York.

3. That since I have been a resident of the State of New York, I have at all times desired to exercise my right to vote

in the political elections of this State and its subdivisions, however, I have been denied the right to vote because I am not literate in the English language. I am literate in the Spanish language.

4. I am literate in the Spanish language because it is one of the two native languages, the other being English. In Puerto Rico Spanish is the language of the greatest use [fol. 31] because Puerto Rico is a former Spanish colony in the same manner that about 36 of the United States were likewise Spanish colonies and which said territories became a part of the United States as the result of a treaty. The treaty involving the Territory of Puerto Rico was signed December 10th, 1898, and according to said treaty the civil rights and political status of the native inhabitants are to be determined by the Congress. In the implementation of the Treaty Congress provided that either the English or Spanish language could be used, and likewise by law made natives of Puerto Rico citizens of the United States. In Puerto Rico citizens of the United States literate only in English suffer no loss of the right to vote or other civil disability.

5. Your petitioner states that he is being denied the right to vote because of his race, as a Puerto Rican of Spanish ancestry. That as a result he is being denied the equal protection of the law guaranteed to him by the 14th Amendment of the United States Constitution. That the Board of Elections of the City of New York is violating the Civil Rights Act of 1957 as amended by establishing a practice or pattern in the deprivation of the right to vote to United States Citizens. The Civil Rights Commission has investigated this pattern or practice and has found as a fact that Puerto Ricans are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York.

6. Petitioner states that the major political parties devote special efforts to get the Spanish speaking minorities to vote for them, and much campaigning is done in the

Spanish language in the press, radio and television, and many promises are made in the Spanish language and we are deceived in the Spanish language, because the literacy test in the English language is not adequate proof that one who is able to pass it really knows the English language. This is merely another manifestation of the denial of the equal protection of the law practiced on the Spanish speaking Puerto Ricans.

7. That the respondent, NELSON ROCKEFELLER, as an ex-
[fol. 32] ecutive officer of the State of New York is not supporting the Constitution of the United States as required by Article VI of the United States Constitution in that the English Language literacy voting requirement is contrary to the 14th Amendment in that it denies the equal protection of law to Spanish language oriented Puerto Rican United States citizens; in that it denies or abridges the right to vote to United States citizens over 21 years of age to persons who have not participated in rebellion or other crime. The VI Amendment of the United States Constitution is further violated in that the right established under the treaty with Spain to have Congress determine the civil rights of Puerto Rican United States citizens is interefered with.

The most grievous interference caused by respondents' refusal to support the Constitution and laws of the United States are those acts which result in a violation of the United Nations Charter and the Universal Declaration of Human Rights. The United Nations Charter is a Treaty obligation of the United States and every political subdivision thereof. The respondents are pledged by the United States Government at Article 55 to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, and Article 21 of the Declaration of Human Rights establishes the right to vote as a basic human right.

8. The right to vote for Spanish speaking United States citizens is of very momentous importance due to the prevail-

ing assaults being made by communist elements on the Spanish speaking republics of our hemisphere who are also members of the United Nations. That discrimination or denial of the equal protection of the law to Spanish speaking United States citizens will expose our great nation to similar assaults, and perhaps even sanctions to expulsion from the United Nations Organization.

9. That the right to vote is the only means that United States citizens have to express their will in the operation of their government. The Spanish speaking United States citizens are particularly desirous of the right to vote in the light of certain legislative and administrative projects [fol. 33] which will affect Spanish speaking United States citizens in a very direct manner. Spanish speaking United States citizens are especiall apprehensive of proposed legislation which will suspend or exempt certain persons, firms or corporations from the execution of the anti-trust laws when engaged in foreign commerce. Spanish speaking United States citizens are sensitive to this, aside from the fact that the United States Treasury may possibly be deprived of millions of dollars of lawful revenue, and may result in the discontinuance of many pending anti-trust matter, but we want to save the United States from the cynical comments and criticims which result from any such law. The fact that the Latin Americans would be treated with the same disdain and denial of equality as the United States treats its own Spanish speaking citizens, because they too speak the Spanish language, is already in evidence.

10. That the English language literacy requirement for the exercise of the right to vote is merely a remaining burden wished upon our society by an obsolete Anglo-Saxon racist conspiracy fanned into new life by a Join Legislative Investigation on Seditious Activities and Report on Revolutionary Radicalism of the New York Senate of 1920. The allegation of this panic begotten document confused the foreign language with anarchy, revolution and subversion, and English with patriotism and loyalty. Our experi-

ence with the Spanish speaking United States citizens has taught us that they are loyal citizens on the battlefields as well as in the home and factories of our great nation. The United Nations Charter and the Declaration of Human Rights have impliedly repealed the English language limitation, as well as the Civil Rights Act as amended.

11. That the respondent, WILLIAM T. ROGERS, Attorney General of the United States has been apprised of the pattern or practice of the State of New York to deny the right to vote to citizens of the United States because of their race, namely Puerto Rican Citizens through the device of an English language literacy test. He cites the Lassiter v. Northampton County Board of Elections, 360 U.S. 45 as being the law and makes no distinction of facts between [fol. 34] the present matter and the stated authority. That said respondent is in error and is not responding to the indications of the Civil Rights Act of 1957 as amended. That the Lassiter case recognized that the literacy test could be used for illegal or improper motives of exclusion from the right to United States citizens otherwise qualified to vote. That subsequent to, and for the express purpose to remedy the situation protected by the Lassiter case the Civil Rights Act of 1957 as amended provided that where a deprivation of the right to vote was the result of a pattern or practice the Attorney General shall take further action to grant the necessary relief to allow the deprived citizen an opportunity to vote. The statute uses the word "may" indicating discretion of the Attorney General. Petitioner states that there has been a finding of fact resulting from an investigation of the said pattern or practice by the United States Civil Rights Commission, that Puerto Rican American Citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York. Hence the Attorney General's discretion must now respond to the finding of fact, as this was the obvious intention of Congress in passing said legislation.

12. That the respondent WILLIAM T. ROGERS, Attorney General of the United States fails to support the Constitution of the United States as required by Article VI of said Constitution, in that he has not acted in accordance with the obligations of the United States Government to the United Nations Organization pursuant to its pledge at Article 56 of the United Nations Charter, to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race sex, language, or religion, as well as the requirement of Article 21 of the Declaration of Human Rights which establishes the right to vote as a basic human right of all members of the United Nations Organization. That the provision of the Treaty of Paris of December 10th, 1898 reserving to Congress the right to determine the civil rights and political status of Puerto Ricans.

[fol. 35] 13. That the Board of Elections of the City of New York, as respondent herein fails to support the Constitution of the United States and Laws and Treaties made in pursuance of said United States Constitution as hereinbefore mentioned.

14. That petitioner has made no previous application for the relief demanded herein.

15. That petitioner shall be irreparably damaged if the relief sought herein is not granted prior to the next general election.

WHEREFORE, it is respectfully requested that the respondent WILLIAM T. ROGERS, Attorney General of the United States be ordered to take such action as required pursuant to the Civil Rights Act of 1957, as amended, and cause an order to be issued to the respondent Board of Elections of the City of New York or its Officers to allow the petitioner, JOSE CAMACHO, to register and in all ways to be qualified to vote in the next election; and that the said WILLIAM T. ROGERS, Attorney General of the United States be restrained from interfering with the enforcement of the

hereinstated provisions of the Constitution of the United States, and the laws and treaties in pursuance thereof; that the respondents NELSON ROCKEFELLER, Governor of the State of New York, and LOUIS LEFKOWITZ, Attorney General of the State of New York be enjoined from enforcing the English language literacy requirement of the Election Law of the State of New York because it is contrary to the Constitution of the United States and laws and treaties in pursuance thereof; that the respondent BOARD OF ELECTIONS OF THE CITY OF NEW YORK be required to take all necessary steps to allow the petitioner to register and vote in the next election in the City and State of New York, and if literacy be required said Board of Elections of the City of New York shall take the proof of such literacy from the petitioner in the Spanish Language, and for such other and further relief as may be just herein.

/s/ JOSE CAMACHO
Petitioner

[fol. 36]
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOSE CAMACHO, being duly sworn, deposes and says:

That he is the petitioner in the within action, that he has had read and knows the contents of the foregoing petition, and that the same is true to his knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

/s/ JOSE CAMACHO
JOSE CAMACHO

Sworn to before me this
8th day of September, 1960

FRANK C. TERMINI
Notary Public, State of New York
No. 24-9304700
Qualified in Kings County
Commission Expires March 30, 1958

[fol. 37]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 12434/63

In the Matter of the Application of

MARTHA CARDONA, Petitioner,

for an order pursuant to Article 78
of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents,

—and—

LOUIS J. LEFKOWITZ, As Attorney General, appearing specially pursuant to Section 71 of the Executive Law.

SUPPLEMENTAL AFFIDAVIT OF GEORGE C. MANTZOROS—
Filed March 13, 1964

State of New York,
County of New York, ss.:

George C. Mantzoros, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, appearing herein pursuant to Executive Law, Section 71. This supplemental affidavit is submitted pursuant to leave of this Court.

2. Relitigation of the issue of the constitutionality of the literacy in English qualification contained in Article II, Section 1 of the New York Constitution which is barred by

the doctrine of *res judicata* is here sought on the grounds of frivolous contentions of alleged newly-found classifications which, it is claimed, are discriminatory, and by the extension of arguments previously advanced by persons [fol. 38] similarly situated and rejected by the federal and state courts.

3. The contention that Article II, Section 1 of the New York Constitution exempts from the literacy in English qualification persons physically disabled which, it is claimed, constitutes a discriminatory classification, is a fallacy. In the first place, even if this were so, this would be a reasonable classification. Actually, it is not even accurate. Physical disability is not an exception to the literacy qualification as evidenced both by the syntax of Article II, Section 1, and the implementing provisions of the Election Law. A new voter, including a person physically disabled, may present as evidence of literacy, a certificate or diploma (Election Law, Section 168[2]). The Legislature contemplated that physically disabled persons should comply with the literacy qualification when it described the contents of a certificate of literacy to be issued by the Board of Regents, to wit: ". . . That the voter to whom it is issued is able to read and write English, or is able to read and write English save for physical disability only" (*ibid.* Section 168[1]). Accordingly the Board of Regents have adopted rules which, in pertinent part, provide (Rules of the Board of Regents of the University of the State of New York, Section 134):

"*Evidence of literacy.* Certificates of literacy shall be issued as follows:

* * * * * * *

2. To applicants who because of physical disability are unable to pass the New York State Regents literacy test but who can satisfy the examiner that they could pass the test if it were not for such disability. Upon the issuance of a certificate of literacy in such cases, the examiner shall write in ink across the face of

[fol. 39] the certificate of literacy the words 'physically disabled.'"

4. The provisions in Article II, Section 1, of the New York Constitution entitling persons who were eligible to vote prior to January 1, 1922, is a savings clause which properly applies prospectively. Since it protects citizens from *ex post facto* disfranchisement, it cannot be deemed to create classes. It is entirely uniform in its application to all citizens. There is not a scintilla of credibility in any assertion that it was aimed to counteract the Fifteenth Amendment as in the cases cited by petitioner and it would be devoid of any factual reliability to insinuate that it was designed against the ethnic group in which petitioner claims to be a member. This state constitutional provision was enacted over forty years ago and prior to the emigration of a large number of persons from Puerto Rico to New York City during the last twenty years.

5. Literacy in the language of the country of a citizen's national origin and the alleged availability of communication media in such language, however desirable, has already been held by the Courts as not relevant or determinative of the existence of a classification on ethnic grounds. Such an argument merely seems to show that the People of the State could, if they so choose, insure the intelligent use of the ballot by alternative enactment which is a matter completely for consideration by the citizens of the State in the area of suggested constitutional revision.

6. The Memorandum by the Government of the United States to the United Nations issued March 21, 1963, which petitioner cites, is not here pertinent. It recites the development and establishment of the new constitution for Puerto [fol. 40] Rico which like other statutes and treaties previously relied upon by persons similarly situated, merely govern the internal affairs of Puerto Rico. This document does not purport to and could not guarantee to petitioner any extraterritorial right to vote in New York without complying with its voting qualifications.

Wherefore, it is respectfully requested that this proceeding to relitigate the identical issue adjudicated by this Court and the federal (three judge) Court be dismissed in all respects.

George C. Mantzoros

Sworn to before me this 9th day of March, 1964.

Percy Schuberth, Assistant Attorney General of the State of New York.

[fol. 41] Affidavit of Service (omitted in printing).

[File endorsement omitted]

[fol. 42]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Special Term—Part I

Present: Hon. Henry Clay Greenberg, Justice.

Index Number 12434, 1963

In re: MARTHA CARDONA

—against—

JAMES M. POWER

MEMORANDUM DECISION—March 12, 1964

Petitioner institutes this article 78 proceeding for an order directing the Board of Elections of the City of New York to register petitioner as a duly qualified voter, or, in the alternative, directing said board to permit petitioner to take the literacy test in Spanish, and upon her passing

successfully such test, to register her as a duly qualified voter. Petitioner claims that she is a United States citizen of Puerto Rican birth, literate in the language of Puerto Rico, but not literate in the English language. Petitioner challenges the validity of Article II, section 1, of the New York Constitution, and the implementing statutes, sections 150, 168 and 201 of the Election Law, in so far as they require any person after January 1, 1922, except for physical disability, to be able to read and write English before being entitled to vote. Twice before unsuccessful challenges were made to their validity (Camacho v. John Doe, 31 Misc. 2d 692, aff'd 7 N. Y. 2d 762, and Camacho v. Rogers, 199 F. Supp. 155 [S. D. N. Y., three-judge court]). In Lassiter v. Northhampton Company (Board of Elections, 360 U. S. 45), the court upheld the constitutionality of a North Carolina statute requiring that a prospective voter be able to read and write any section of the Constitution of North Carolina in the English language. No valid ground of persuasive quality has been offered in behalf of the application as would justify a departure from prior rulings on the same issue. Accordingly, the application is denied and the petition is dismissed.

HCG
J.S.C.

I have compared the annexed copy of an order with the original thereof and found it to be a true and complete copy.

John L. Radlein, Acting Corporation Counsel.

[fol. 43]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 12434/63

In the Matter of the Application of
MARTHA CARDONA, Petitioner,
for an order pursuant to Article 78 of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents,

—and—

LOUIS J. LEFKOWITZ, As Attorney General, appearing specially pursuant to Section 71 of the Executive Law.

NOTICE OF APPEAL—March 27, 1964

SIRS:

Please Take Notice, that pursuant to § 5601 (b) (2) Civil Practice Laws and Rules, the petitioner, Martha Cardona, hereby appeals to the Court of Appeals from the final order, dated March 12, 1964, and entered herein in the office of the Clerk of the County of New York on March 13, 1964, wherein it is adjudged that the application be denied and the petition be dismissed for failure to state a cause of action, and the petitioner appeals from each and every part of said final order as well as from the whole thereof.

Dated: New York, New York, March 27, 1964.

Yours, etc.,

Paul O'Dwyer, Attorney for the Plaintiff-Appellant,
50 Broad Street, New York 4, New York.

[fol. 44]
To:

Leo A. Larkin, Esq., Corporation Counsel, Attorney for Defendant-Respondent, Municipal Building, New York 7, New York.

Louis J. Lefkowitz, Attorney General of the State of New York, Appearing specially pursuant to Executive Law, § 71, Respondent.

County Clerk, New York County.

[fol. 45] Stipulation Waiving Certification (omitted in printing).

[fol. 46]
In the Court of Appeals of the State of New York

In the Matter of

Martha Cardona, Appellant,

v.

James M. Power et al., Constituting the Board of Elections of the City of New York, Respondents,

and

Louis J. Lefkowitz, as Attorney-General, Intervenor-Respondent.

Opinion—Decided May 27, 1965

Order affirmed, without costs. (See *Matter of Camacho* v. *Doe*, 7 N Y 2d 762.)

Concur: Judges Dye, Van Voorhis, Scileppi and Bergan. Chief Judge Desmond dissents and votes to reverse in the following memorandum in which Judges Fuld and Burke concur.

Chief Judge Desmond (dissenting). I dissent and vote to reverse and to grant the prayer of the petition. Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State's literacy-in-English requirements, is unreasonable and unconstitutionally discriminatory particularly since, by reason of the effective date of the literacy amendment to section 1 of article II of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy.

Order affirmed.

[fol. 47] Triple Certificate to foregoing paper (omitted in printing).

[fol. 48]

No. 11

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 27th day of May in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

Witness, the Hon. Charles S. Desmond, Chief Judge, *Presiding*.

Raymond J. Cannon, *Clerk*.

Sup. Ct. No. 11 65

In the Matter of the application of

MARTHA CARDONA, Appellant,

for an order &c.

vs.

JAMES M. POWER, & ors., Members of and constituting the Board of Elections of the City of New York, Respondents,

and

LOUIS J. LEFKOWITZ, Attorney General, appearing specially pursuant to Section 71 of the Executive Law, Intervenor-Respondent.

REMITTITUR—May 27, 1965

Be It Remembered, That on the 8th day of January in the year of our Lord one thousand nine hundred and sixty-five, Martha Cardona, the appellant—in this cause, came here unto the Court of Appeals, by Paul O'Dwyer, her attor-[fol. 49] ney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Supreme Court, New York County, and James M. Power, & ors., Members of and constituting the Board of Elections of the City of New

York, the respondents, and Louis J. Lefkowitz, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law, the intervenor-respondent in said cause, afterwards appeared in said Court of Appeals by Leo A. Larkin, and Louis J. Lefkowitz, pro se, attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Paul O'Dwyer, of counsel for the appellant-, and by Mr. Samuel A. Hirshowitz, of counsel for the intervenor-respondent, no appearance for the respondents, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the order herein be and the same hereby is affirmed, without costs. (See *Matter of Camacho* v. *Doe,* 7 N Y 2d 762.)

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, without costs, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court [fol. 50] of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 51]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Tenth day of June A. D. 1965.

Present, Hon. Charles S. Desmond, Chief Judge, presiding.

Mo. No. 548

In the Matter of the Application of

MARTHA CARDONA, Appellant,

for an order &c.

vs.

JAMES M. POWERS & ors., Members of and constituting the Board of Elections of the City of New York, Respondents,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law, Intervenor-Respondent.

AMENDMENT TO REMITTITUR—June 10, 1965

An application to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said application be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant contended that the provisions of Article II, Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law as applied to her infringed her rights under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution of the United States in that such provisions unreasonably discriminated between classes of citizens. The Court of Appeals held that there was no violation of appellant's constitutional rights.

And the Supreme Court of New York County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

Gearon Kimball, Deputy Clerk.

[fol. 52]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Ninth day of July A. D. 1965.

Present, Hon. Charles S. Desmond, Chief Judge, presiding.

Mo. No. 612

In the Matter of the Application of

MARTHA CARDONA, Appellant,
for an order &c.

vs.

JAMES M. POWER & ors., Members of and constituting the Board of Elections of the City of New York, Respondents,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law, Intervenor-Respondent.

SECOND AMENDMENT TO REMITTITUR—July 9, 1965

A motion for a further amendment of the remittitur in the above cause to this Court having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be further amended by adding thereto the following:

Upon the appeal herein there were also presented and necessarily passed upon certain questions, in addition to those specified in the order of this Court dated June 10, 1965, under the Constitution of the United States, viz.: Petitioner contended that the literacy-in-English provision of Article II, section 1 of the New York State Constitution and sections 150, 155, 168 and 201 of the New York State Election Law as applied to her, constituted a violation of Article IV, sections 2 and 4 and Article VI, section 2 of the Constitution of the United States, in that such provision unreasonably and unconstitutionally discriminates against native-born citizens of the United States of Puerto Rican birth and denies them rights equal to those accorded native-born citizens of other parts of the United States, and that such provision violates the Treaty of Paris of 1898, the United Nations Charter, ratified as a treaty on August 8, 1945, and the express commitment of the United States to the United Nations in 1953 pursuant to such United Nations Charter. The Court of Appeals held there was no violation of petitioner's constitutional rights.

And the Clerk of the Supreme Court of New York County hereby is requested to return said remittitur to this court for amendment accordingly.

A copy

Gearon Kimball, Deputy Clerk.

[fol. 53]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index #12434/63

In the Matter of the Application of

MARTHA CARDONA, Petitioner

for an order pursuant to Article 78
of the Civil Practice Act

—against—

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York, Respondents

—and—

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 19, 1965

I. Notice is hereby given that Martha Cardona, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York, as amended July 9, 1965, as previously amended June 10, 1965, and as initially rendered May 27, 1965, affirming an order of the Supreme Court of the State of New York, County of New York, a Court of original jurisdiction, dismissing appellant's petition requiring respondents, constituting the Board of Elections of the City of New York, to register her as a duly qualified voter, or, in the alternative, to permit her to take a literacy test in Spanish and upon successfully passing

such test, to register her as a duly qualified voter, which [fol. 54] said order of the said Supreme Court of the State of New York was made in this proceeding on March 12, 1964, and entered in the office of the Clerk of New York County on March 13, 1964.

This appeal is taken pursuant to 28 USCA Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Final judgment of the Court of Appeals of the State of New York, dated May 27, 1965.
2. Amendment to final judgment of the Court of Appeals of the State of New York, dated June 10, 1965.
3. Amendment to final judgment of the Court of Appeals of the State of New York, dated July 9, 1965.
4. Majority opinion of the Court of Appeals of the State of New York, dated May 27, 1965.
5. Minority opinion of the Court of Appeals of the State of New York, dated May 27, 1965.
6. Notice of Appeal to the Court of Appeals of the State of New York, dated March 27, 1964.
7. Order and opinion of Special Term, Part I, Supreme Court, New York County, Greenberg, J., dated March 12, 1964.
8. Notice of Motion attached to petition dated August 6, 1963.
9. Petition of Martha Cardona, dated August 6, 1963.

[fol. 55] 10. Order permitting Attorney General to intervene, dated September 3, 1963.

11. Answer of Attorney General, dated February 28, 1964.

12. Affidavit of George C. Mantzoros, dated February 28, 1964.

13. Exhibit A (Petition of Jose Camacho in Federal Court) annexed to foregoing affidavit.

14. Exhibit B (Petition of Jose Camacho in Federal Court) annexed to foregoing affidavit.

15. Supplemental affidavit of George C. Mantzoros, dated March 9, 1964.

16. Stipulation waiving certification.

III. The following questions are presented by this appeal:

1. Whether a native born United States Citizen, of United States citizen parents, literate in the native language of the part of the United States in which she was born and educated properly be deprived of her right as a citizen to vote in elections solely because she cannot read or write in English, a language which is to her foreign.

2. Whether the provisions of Article II Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law of the State of New York, as applied to appellant infringe her rights under the 5th, 14th and 15th amendments to the Constitution of the United States, in that such provisions of New York Law unreasonably discriminate between classes of citizens, in that such provisions exempt from all literacy requirements persons who could have qualified to vote although illiterate prior to 1921, in that such provisions exempt from their application entirely persons unable to read and write English be- [fol. 56] cause of physical defects, and in that said provisions exempt from all literacy requirements veterans of the Armed Forces, occupants of veterans' hospitals re-

gardless of whether or not they themselves are veterans, while at the same time denying the right to vote to persons literate in the Spanish language, a language native to the part of the United States in which they were born and in whose United States government schools they were educated.

3. Whether the literacy in English provisions of Article II Section 1 of the New York State Constitution and Sections 150, 155, 168 and 201 of the New York State Election Law as applied to appellant constitute violations of Article IV Sections 2 and 4 and Article VI Section 2 of the Constitution of the United States in that such provisions of New York Law unreasonably and unconstitutionally discriminate against native born citizens of the United States of Puerto Rican birth and deny them rights equal to those accorded to native born citizens of other parts of the United States and that such provisions violate the Treaty of Paris of 1898, the United Nations Charter, ratified as a Treaty on August 8, 1945, and the expressed commitments of the United States to the United Nations in 1953, pursuant to such United Nations Charter.

Dated: New York, New York, August 18, 1965.

Paul O'Dwyer, Attorney for Appellant Martha Cardona, 50 Broad Street, New York, New York 10004.

[fol. 57] Affidavit of Service (omitted in printing).

[fol. 58] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 59]

SUPREME COURT OF THE UNITED STATES

No. 673, October Term, 1965

MARTHA CARDONA, Appellant,

v.

JAMES M. POWER, et al.

ORDER NOTING PROBABLE JURISDICTION—January 24, 1966

Appeal from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is placed on the summary calendar and set for oral argument immediately following Nos. 847 and 877.